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10/070,936	08/09/2002	Jutta Glock	PH/5-31140A	4690
26748	7590	09/18/2009	EXAMINER	
SYNGENTA CROP PROTECTION, INC. PATENT AND TRADEMARK DEPARTMENT 410 SWING ROAD GREENSBORO, NC 27409			QAZI, SABIHA NAIM	
			ART UNIT	PAPER NUMBER
			1612	
			NOTIFICATION DATE	DELIVERY MODE
			09/18/2009	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

department-gso.patent@syngenta.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/070,936	<b>Applicant(s)</b> GLOCK ET AL.	
	<b>Examiner</b> Sabiha Qazi	<b>Art Unit</b> 1612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

**Final Office Action**

Claims 1-17 are pending. No claim is allowed at this time. Amendments are entered.

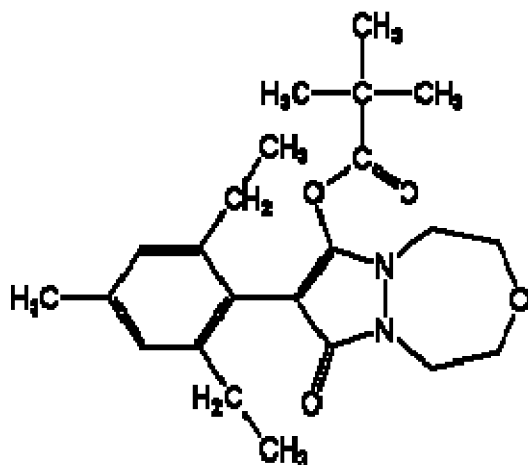
**Summary of this Office Action dated September 11, 2009**

1. Information Disclosure Statement
2. Copending Applications
3. Specification
4. 35 USC § 112 --- First Paragraph Scope of Enablement Rejection
5. 35 USC § 103(a) Obviousness Rejection
6. Response to Remarks and Declarations
7. Conclusion
8. Communication

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**Pinoxaden, compound 1.008 of the present invention**

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**STATUS:** ISO 1750 (published)**IUPAC:** 8-(2,6-diethyl-*p*-tolyl)-1,2,4,5-tetrahydro-7-oxo-7*H*-pyrazolo[1,2-*d*][1,4,5]oxadiazepin-9-yl 2,2-dimethylpropionate**CAS:** 8-(2,6-diethyl-4-methylphenyl)-1,2,4,5-tetrahydro-7-oxo-7*H*-pyrazolo[1,2-*d*][1,4,5]oxadiazepin-9-yl 2,2-dimethylpropanoate**REG. NO.:** 243973-20-8**FORMULA:** C<sub>23</sub>H<sub>32</sub>N<sub>2</sub>O<sub>4</sub>**ACTIVITY:** herbicides (unclassified herbicides)**NOTES:****STRUCTURE:**

### **Information Disclosure Statement**

Some references are cited in the specification. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### **Copending Applications**

Applicants must bring to the attention of the examiner, or other Office official involved with the examination of a particular application, information within their knowledge as to other copending United States applications, which are "material to patentability" of the application in question. MPEP 2001.06(b). See *Dayco Products Inc. v. Total Containment Inc.*, 66 USPQ2d 1801 (CA FC 2003).

### **Specification**

The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### **35 USC § 112—Scope of Enablement Rejection**

The following is a quotation of the first paragraph of 35 U.S.C. 112:

*The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.*

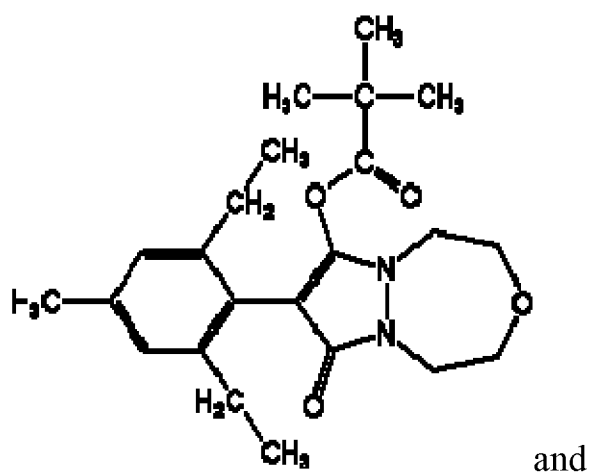
Claims 1-17 rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the combinations such as combination of the compound 1.008 (or 1.007) and cloquincet-mexyl on pages 43 and 44..

Applicant at the end of page 44 disclose that “from Tables B2.1 to 2.4, it can be

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deduced that the addition of the oil additive MERGE to a mixture of two herbicides and one safener leads to a surprising increase in herbicidal action on the weeds without harming the crops”

Pinoxaden (compound 1.008 of formula i)



The specification does not enabled for the synergistic combination of a)all the compounds of formula 1 and herbicides b) which as claimed are herbicidally synergistic amount of at least one herbicide selected from clodinafop-p-propargyl, fenoxaprop-P-ethyl, tralkoxydim, triasulfuron, amidosulfuron, tribenuron, idosulfuron, thifensulfuron-methyl, metsulfuron, flupyrsulfuron, sulfosulfuron, mecoprop, fluroxypyr, MCPA, 2,4-D ester, 2,4-D amine, triallate, prosulfocarb, dicamba, diflufenican, picolinafen, pendimethalin, trifluralin, bromoxynil, ioxynil, flucarbazone, florasulam, propoxycarbazone, and metosulam.

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The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

Compound of formula I itself include very large number of compounds due to variety of substituents defined by G, R<sub>1</sub> and R<sub>2</sub>.

No synergism has been disclosed in the specification, which has been claimed. Applicant had no possession at the time this application was filed of claimed. The specification discloses the combination of compound 1.008 (one compound from formula (I) and cloquitocet-mexyl with tralkoxydim, fenoxaprop-ethyl and trisulfuron (see tables B2.1 to B2.4 on pages 43 and 44 in specification). The compounds of (b) as in claim 1 contains compounds having variety of different structures, which surely are expected to react differently. The prediction of **synergism** for the combination such a large number of compounds (b) having different properties and compound of formula (I) is therefore impossible.

Factors to be considered in determining whether a disclosure meets the enablement requirement of 35 U.S.C. 112, first paragraph, have been described in In re Colianni, 195 USPQ 150, 153 (CCPA 1977), have been clarified by the Board

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of Patent Appeals and Interferences in Ex parte Forman, 230 USPQ 546 (BPAI 1986), and are summarized in In re Wands (858 F2d 731, 737, 8 USPQ2d 1400, 1404 (Fed Cir. 1988)). Among these factors are: (1) the nature of the invention; (2) the state of the prior art; (3) the relative skill of those in the art; (4) the predictability or unpredictability of the art; (5) the breadth of the claims; (6) the amount of direction or guidance presented; (7) the presence or absence of working examples; and (8) the quantity of experimentation necessary.

When the above factors are weighed, it is the examiner's position that one skilled in the art could not practice the invention without undue experimentation.

The instant invention is drawn to a selective herbicidal composition comprising (a) herbicidally effective amount of a compound of Formula I and (b) herbicidally synergistic amount of at least one herbicide selected from clodinafop-p-propargyl, -fenoxaprop-P-ethyl, tralkoxydim, triasulfuron, amidosulfuron, tribenuron, idosulfuron, thifensulfuron-methyl, metsulfuron, flupyrsulfuron, sulfosulfuron, mecoprop, fluroxypyr, MCPA, 2,4-D ester, 2,4-D amine, triallate, prosulfocarb, dicamba, diflufenican, picolinafen, pendimethalin, trifluralin, bromoxynil, ioxynil, flucarbazone, florasulam, propoxycarbazone, and metosulam.

**(1) The predictability or unpredictability of the art:**

Claimed invention is unpredictable for the following reasons. The specification discloses the combination of compound 1.008 (one compound from formula (I) and cloquitocet-mexyl with tralkoxydim, fenoxaprop-ethyl and trisulfuron (see tables B2.1 to B2.4 on pages 43 and 44 in specification). The compounds of (b) as in claim 1 contain compounds having variety of different structures, which surely are expected to react differently. The prediction of synergism for the combination such a large number of compounds (b) having different properties and compound of formula (I) is therefore impossible.

**(2) The breadth of the claims:** The claims are broad; the compounds of formula I itself includes thousands of compounds and their combination with the multitude of different classes of herbicides which can be selected from clodinafop-p-propargyl, -fenoxaprop-P-ethyl, tralkoxydim, triasulfuron, amidosulfuron, tribenuron, idosulfuron, thifensulfuron-methyl, metsulfuron, flupyrsulfuron, sulfosulfuron, mecoprop, fluroxypyr, MCPA, 2,4-D ester, 2,4-D amine, triallate, prosulfocarb, dicamba, diflufenican, picolinafen, pendimethalin, trifluralin, bromoxynil, ioxynil, flucarbazone, florasulam, propoxycarbazone, and metosulam.

. These classes are so structurally different from each other; it is impossible to predict any SYNERGISTIC activity for such compounds.. For example, the

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three structures shown below belong to extremely different class of chemical compounds.

**(3) The amount of direction or guidance presented:** There is no guidance in the disclosure on how the invention can be used to predict the synergism for all the combinations as claimed. **There is no teaching combination of the compounds of formula 1 with all the various classes of herbicides listed in part a) and part b) of claim 1.**<sup>1</sup>

**(4) The quantity of experimentation necessary**

Since there is no guidance and/or direction provided by the Applicants for the wide variety of the compounds and their synergistic combinations, the claims are broad, there is not sufficient guidance presented in the specification for such a large number of claimed combination of compounds for the reasons cited above, one skilled in the art would go through undue experimentation to practice the invention as claimed.

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<sup>1</sup> Examiner notes that Applicants in the specification disclose that “a specific safener will often be suitable only for a specific action with respect not only to the cultivated plants but also to the herbicide, and in some cases also subject to the mode of application, i.e. a specific safener will often be suitable only for a specific cultivated plant and a specific class of herbicide. See paragraph 3 on page 1 of the specification.

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A disclosure should contain representative examples, which provide reasonable assurance to one skilled in the art that the compounds fall within the scope of a claim will possess the alleged activity. See *In re Riat et al.* (CCPA 1964) 327 F2d 685, 140 USPQ 471; *In re Barr et al.* (CCPA 1971) 444 F 2d 349, 151 USPQ 724.

Accordingly, the instant claims do not comply with the enablement requirement of §112, since to practice the claimed invention in its “full scope” a person of ordinary skill in the art would have to engage in undue experimentation, with no assurance of success.

### **35 USC § 103(a) Obviousness Rejection**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

*(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art*

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*to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.*

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over KRUGER et al. (EP 508,126), DAHMEN (DE 197 28 568), BOGER et al. (WO 96/21652), HAZEN et al (US 4,834,908) and the disclosure of Applicants own specification.

**Applicants claim**

1. (Currently amended) A selective herbicidal composition comprising, in addition to

customary inert formulation assistants, as the active ingredient a mixture of

a)

a herbicidally effective amount of a compound of formula I

(I)

or salts or diastereoisomers thereof, wherein:

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R1 and R3 independently of one another are C1-C4-alkyl, C2-C4-alkynyl, C~C4-halogenalkyl, C~C6-alkoxy, or C~C2-halogenalkoxy, with the proviso that R~ and R3 are not simultaneously methyl;

G is hydrogen, -C(O)-R30 or C(O)-O-R31;

R30 and R3~ independently of one another, are hydrogen, C~C~10-alkyl; and

b)

a herbicidally synergistic amount of at least one herbicide selected from  
clodinafop-

p-propargyl, -fenoxaprop-P-ethyl, tralkoxydim, triasulfuron, amidosulfuron, tribenuron, idosulfuron, thifensulfuron-methyl, metsulfuron, flupyrsulfuron, sulfosulfuron, mecoprop, fluroxypyr, MCPA, 2,4-D ester, 2,4-D amine, triallate, prosulfocarb, dicamba, diflufenican, picolinafen, pendimethalin, trifluralin, bromoxynil, ioxynil, flucarbazone, florasulam, propoxycarbazon, and metosulam.

2. (Previously Presented) Composition according to claim 1, which contains, to  
antagonise the

herbicide, an antidotally effective amount of a safener selected from cloquintocet, an alkali, alkaline earth, sulfonium or ammonium cation of cloquintocet, cloquintocet-mexyl, mefenpyr, an alkali, alkaline earth, sulfonium or ammonium

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cation of mefenpyr and mefenpyr-diethyl.

**Determining the scope and contents of the prior art (*MPEP* § 2141.01)**

The references cited above teach combinations of pyrazilinnone compositions of formula I as safeners as presently claimed, which embraces Applicant's claimed invention.

WO 96/21652 teaches 4-aryl and 4-heteroaryl 5-oxopyrazoline derivatives of formula (I) in which R<sub>1</sub>, R<sub>2</sub>, R<sub>3</sub> and G, as defined in claim 1, to compositions comprising these compounds to their use as insecticides, acaricides or herbicides especially in crops of useful plants, and to selective herbicidal compositions comprising compounds of formula (I) and, as safeners, herbicide antagonistically effective quantities of either a quinoline derivative of formula (X). Compounds of formula 1 as in claim 1 have been generically taught by the reference. R<sub>2</sub> and R<sub>3</sub> can form a ring and G represents CO-A. See abstract of the invention. See the entire documents especially, especially lines 21 to 49 on page 31 abstract; 3<sup>rd</sup> para on page 23; 2<sup>nd</sup> para on page 28.

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EP 508,126 teaches the composition of the combination of compounds of formula I and another active compound useful as herbicides.

DE 197 28 568 teaches the herbicidal combination of Fenoxaprop-ethyl, compound (III) Clodinafop-propargyl with another herbicide. The combination of these compounds is claimed in part b of claim 1. See Compound (II) Fenoxaprop-ethyl, compound (III) Clodinafop-propargyl on page 8.

HAZEN et al. teaches that addition of oil in composition increases the herbicidal activity (abstract). It further teaches that certain crop oil concentrates enhance the activity of a broad spectrum of herbicides to an unexpected high level. Furthermore, it teaches these “same crop oil concentrates surprisingly defeat the antagonism which is often created when two or more herbicides are utilized simultaneously” (lines 58-63 in col. 1). See lines 31-57 in column 4, lines 58-65 in col. 4., the abstract, tables especially tables IX and XI and examples 1-3 in col. 4.

**Specification of present invention discloses that all the compounds in the present invention are known. See lines 17 to 27 on page 1, and on pages 10-12.**

***Ascertaining the differences between the prior art and the claims at issue,  
and resolving the level of ordinary skill in the pertinent art (MPEP §  
2141.012)***

Because of each compound appears to be well known in the prior art as cited above, the combination of the compounds would have been obvious at the time the invention was filed. It would appear that It is *prima facie* obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose in order to form a third composition that is to be used for the very same purpose; the idea of combining them flows logically from their having been individually taught in the prior art. In re Kerkhoven, 205 USPQ 1069.

If two or more herbicides functioned by somewhat different biological mechanisms, their combined use could clearly be expected to be more efficient than the use of merely a larger amount of any one of the individual herbicides since multiple biological pathways would be affected at the same time. It is also known that, in any population of plants as with any organisms, some will be more resistant to a particular biocide than others.

As has been decided by the court, a combination, for the same purpose, of one additive explicitly disclosed in the prior art and another suggested by the prior art is at least *prima facie* obvious. In re Susi, 169 USPQ 423. There is nothing inventive in a composition of old ingredients of known properties with each ingredient functioning individually as expected. In re Sussaman 58 USPQ 262.

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**Resolving the level of ordinary skill in the pertinent art (MPEP §2141.012)**

One skilled in the art would be motivated to prepare the combinations of excellent herbicides because prior art teaches the use of materials in combination, each of which is known to function for intended purpose, is generally held to be *prima facie* obvious.

See MPEP 2144.06 and see *Ex parte Quadranti*, 25 USPQ2d 1071 (Bd. Pat. App. & Inter. 1992).

See *Ex parte Quadranti* where it was held that if two or more herbicides functioned by somewhat different biological mechanisms, their combined use could clearly be expected to be more efficient than the use of merely a larger amount of any one of the individual herbicides since multiple biological pathways would be affected at the same time. It is also known that, in any population of plants as with any organisms, some will be more resistant to a particular biocide than others. The statistical probability of a large number of plants having higher than usual resistance to all of the components of any particular combination of herbicides, however, is not great. "Use of materials in combination, each of which

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is known to function for intended purpose, is generally held to be prima facie obvious, and in instant case, use of combination of herbicides is so notoriously well known as to be capable of being taken by official notice; generalizations such as Colby formula are not particularly useful in determining whether synergism has been demonstrated, since formula inherently results in expectation of less than additive effect for combination of herbicides, since there is no evidence that such approach is considered valid by significant number of ordinarily skilled workers in relevant area of technology, and since it could be reasonably argued that in most cases, additive or better than additive results could be expected for combination of herbicides.”

“There is no single, appropriate test for determining whether synergism has been demonstrated for chemical combination; rather, facts shown in each case must be analyzed to determine whether chosen method has clearly and convincingly demonstrated existence of synergism or unobvious result”. “Assuming arguendo that the differences in values presented are statistically significant, there is no evidence that they represent a true, practical advantage. In re Freeman, 474 F.2d 1318, 177 USPQ 139 (CCPA 1973); In re Klosak , 455 F.2d 1077, 173 USPQ 14 (CCPA 1972); In re D'Ancicco, 439 F.2d 1244, 169 USPQ 303 (CCPA 1971).

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Also, prescinding from the Colby formula test, which as we have already indicated is at best controversial and in our view probably invalid, there is no evidence that the differences are unexpected. In re Merck, 800 F.2d 1091, 231 USPQ 375 (Fed.Cir. 1986); In re Longi , 759 F.2d 887, 225 USPQ 645 (Fed.Cir. 1985); In re Freeman, *supra*” .

It is *prima facie* obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose in order to form a third composition that is to be used for the very same purpose; the idea of combining them flows logically from their having been individually taught in the prior art. In re Kerkhoven, 205 USPQ 1069.

In the light of the forgoing discussion, the Examiner's ultimate legal conclusion is that the subject matter defined by the instant claims would have been obvious within the meaning of 35 U.S.C. 103(a).

### **Response to Arguments and Declarations**

Applicants' arguments, filed on 7/2/2009 have been fully considered. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or

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newly applied. They constitute the complete set presently being applied to the instant application.

Applicant argues that since claims are amended therefore the scope of rejection should be withdrawn. Examiner respectfully disagrees because

The data in applicant's specification has been considered for evidence of non-obviousness. Applicants must note that the data fails of being commensurate in scope with that of the claimed subject matter. Since the scope is far broader than data disclose, applicant must provide additional evidence to establish why the limited data should be considered as evidence of non-obviousness of the scope of the claimed subject matter. Non-obviousness results cannot be predicted for every compound, especially when applicants are claiming synergistic combination. See MPEP 2144.06

See *In re Kollman*, 595 F.2d 48, 201 USPQ 193 (CCPA 1979) (Claims directed to a synergistic herbicidal composition comprising mixtures of an herbicide known as "FENAC" with a diphenyl ether herbicide in certain relative proportions were rejected as prima facie obvious. Applicant presented evidence alleging unexpected results testing three species of diphenyl ether herbicides over limited relative proportion ranges. The court held that the limited number of species exemplified did not provide an adequate basis for concluding that similar results would be obtained for the other diphenyl ether herbicides within the scope of the generic claims.

All the declarations filed by Applicants on 5/20/2005 have been considered, the data was not considered unexpected. In the first declaration on page 3 two combinations were tested. None of them appears to be synergistic. Compound A + amidosulfuron for example show observed 100 and expected 98.1 Similarly Compound A + flucarbazone shows observed 93 and expected was 86.0. The tested is only one concentration.

Applicant argues that that the results disclosed in the declarations and specifications are synergistic. Examiner disagrees because the results as shown are at very specific concentration for a particular pest. Claims are not drawn to that limited scope. The synergism cannot be predicted. Furthermore, even in the disclosed data many of them do not show synergism such as presented in the declarations. The data as presented does not commensurate with the scope of the claims. The claimed ranges are broad. The difference in efficacy of calculated and observed is substantial in few cases having specific ranges. Claims are not limited to those ranges.

Objective evidence of nonobviousness must be commensurate in scope with the scope of the claims. In *re* Tiffin, 171 USPQ 294. A showing limited to a single species can hardly be considered probative of the invention's nonobviousness in view of the breadth of the claims.

A single species is seldom, if ever, sufficient to support a generic claim. In re Shokal, 242 F.2d 771113 U.S.P.Q. 283, 285 (C.C.P.A. 1957). See also, In re Grimme, 274 F.2d 949, 124 U.S.P.Q. 499, 501 (C.C.P.A. 1960) (the naming of a

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member of a genus or subgenus is not a proper basis for claiming the whole group).

### **Conclusion**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### **Communication**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sabiha Qazi whose telephone number is (571) 272-0622. The examiner can normally be reached on any business day except Wednesday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Krass Frederick can be reached on (571) 272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Sabiha Qazi/

Primary Examiner, Art Unit 1612

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